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PURCHASE FROM THE GRANTOR OF A DEED OF ESCROW.—Delivery of the deed is necessary to pass the title to land, and escrow is a method of delivery. Under the general rule, this delivery does not avail to pass the title until the performance of the conditions or the happening of the contingency upon which the deed is held in escrow, *Smith v. South Royalton Bank*, 32 Vt. 341; but if for any reason, such as insanity, coverture, or death, the grantor becomes incapacitated from passing title before the delivery out of escrow, this second delivery is by the fiction of relation carried back to the time of the delivery into escrow so as to make the title pass as of that time. *Webster v. Kings County Trust Co.*, 145 N. Y. 275. Since then, in the ordinary case, it is not the grantor's deed until the second delivery, the question arises whether a subsequent grantee getting a conveyance before the performance of the conditions of the escrow would get a title indefeasible at law. It is the policy of the law to favor the grant in escrow. At least it is not regarded as just that one charged with notice of the grant in escrow should nevertheless take a complete legal title; and all jurisdictions agree that he can not, though there may be an exception where the original grantee is a volunteer. Since, however, the cases reach this result on different grounds, a conflict arises as to whether an innocent purchaser will take a complete legal title.

Some jurisdictions cut off the intervening grant to a purchaser with notice by extending the use of the fiction of relation. *McDonald v. Huff*, 77 Cal. 279. But as it is a general doctrine that a fiction invoked to do justice should not be urged against innocent third parties, Viner's Abdg. tit. "Relation," in these jurisdictions a *bona fide* purchaser from the grantor of a deed in escrow takes an indefeasible title, *Wolcott v. Johns*, 7 Col. App. 360, and this doctrine has been recently followed. *Emmons v. Harding*, 70 N. E. Rep. 142 (Ind. Sup. Ct.).

Other jurisdictions do not allow an innocent purchaser to defeat the grantee in escrow. *Hall v. Harris*, 5 Ired. Eq. (N. C.) 303. These jurisdictions hold that after the deed is placed in escrow the grantor no longer has full legal title. The grant in escrow puts the land out of his power and makes it possible for the grantee to get something analogous to specific performance at law. All that the grantor has is a title subject to a defeasance, and a title subject to a defeasance is all that a purchaser from him, whether *mala fide* or *bona fide*, can buy. *Hooper v. Ramsbottom*, 6 Taunt. 12; *Fort v. Beekman*, 1 Johns Ch. (N. Y.) 288. Therefore, notwithstanding the intervention of third parties, the grantee in escrow gets a full legal title upon performance of the conditions. *Leiter v. Pike*, 127 Ill. 287. The latter decisions invoke no fiction in reaching this result and seem to support the better rule.—*Harvard Law Review*.

PILOTAGE LAWS (SECS. 1955-1990 VA. CODE ANNO.)—NOT REPUGNANT TO COMMERCE CLAUSE OF U. S. CONSTITUTION NOR TO U. S. REV. STAT., SEC. 4237—ONLY COASTWISE STEAM VESSELS EXEMPTED BY U. S. REV. STAT. 4444—STATE PILOTAGE LAWS DO NOT INFRINGE UPON THE FOURTEENTH AMENDMENT NOR VIOLATE ANTI-TRUST LAWS.—In the case of *Olsen v. Smith et al.*, decided Nov. 28, 1904, 25 Sup. Ct. 52, the Supreme Court of the United States rendered an important decision upholding the constitutionality of the State laws of Texas regulating pilotage. Mr. Justice White delivered the opinion of the

court, holding, first, that a state has power to enact laws regulating pilotage in its own ports; and second, that the provisions of the Texas statutes on that subject were not in conflict with the acts of Congress on the subject of pilotage, and were not of such a character as to cause them to be repugnant to the fourteenth amendment of the Constitution of the United States or to the laws of Congress forbidding combinations in restraint of trade.

In regard to the first point, the court held that even though state laws concerning pilotage are regulations of commerce, "they fall within that class of powers which may be exercised by the states until Congress has seen fit to act upon the subject," citing *Cooley v. Port Wardens*, 12 How. 299, 13 L. Ed. 996; *Ex parte McNeil*, 13 Wall, 237, 20 L. Ed. 624; *Wilson v. McNamee*, 102 U. S. 572, 26 L. Ed. 234. The Court of Appeals of Virginia, in the recent case of *Darden v. Thompson*, 101 Va. 635, 641, 9 Va. Law Reg. 395, which has been taken by appeal to the Supreme Court of the United States, came to the same conclusion.

In regard to the question whether the provisions of the statute of the State of Texas were void as being in conflict with two provisions of the Revised Statutes of the United States, the one providing "that no regulations or provisions shall be adopted by any state which shall make any discrimination in the rate of pilotage or half pilotage between vessels sailing between the ports of one state and vessels sailing between the ports of different states, or any discrimination against vessels propelled in whole or in part by steam, or against national vessels of the United States, and all existing regulations or provisions making any such discrimination are annulled and abrogated" (Rev. Stat. sec. 4237, U. S. Comp. Stat. 1901, p. 2903), the other being the provision of the statutes (Rev. Stat. sec. 4444, U. S. Comp. Stat. 1901, p. 3037) exempting coastwise steam vessels from the operation of state pilotage laws, the court held that, although the provisions discriminating in favor of Texas ships and ports were void (as was held in the court below), because in conflict with the laws of the United States, as the state court held that the discriminating provisions were separable from the rest, the same construction would be adopted in the Supreme Court of the United States. Accordingly, it was held that the statute as construed was valid, and that by section 3237 of the Revised Statutes, Congress did not intend to revoke the power of the states on that subject, or to abrogate existing pilotage laws of the several states, containing discriminatory provisions, but only to abrogate the provisions making the discrimination; and that the provisions of section 4444 of the Revised Statutes clearly contemplated that, by the existing state laws, coastwise steam vessels of the United States were subject to pilotage charges, and proposed, while withdrawing such vessels from pilotage charges, not in other respects to interfere with state laws on the subject of pilotage, a construction plainly resulting, as the court says, from the following provision of section 4444, aforementioned:

"Nothing in this title shall be considered to annul or affect any regulation established by the laws of any state, requiring vessels entering or leaving a port in any such state other than coastwise steam vessels, to take a pilot duly licensed or authorized by the laws of such state."

This construction sustains the decision in *Darden v. Thompson*, 101 Va. 635, referred to above. In that case, a coastwise sailing vessel declined the services of

a pilot, licensed under the laws of this state, and as, by sec. 4444 of the Revised Statutes, only coastwise *steam* vessels are exempted from pilotage regulations by the state, and the court holds above that they were formerly subject to such regulations, it follows that coastwise *sailing* vessels, having never been exempted, are still under state pilotage regulations.

The court further decides that neither the exemption of coastwise steam vessels from pilotage under the United States law, nor any lawful exemption of coastwise vessels created by state laws, concerns vessels in the foreign trade, and therefore any such exemptions do not operate to produce a discrimination against British vessels engaged in foreign trade and in favor of vessels of the United States in such trade.

The court holds that the right of a person who is competent to perform pilotage services, to render them is not an inherent right guaranteed by the fourteenth amendment, since such a contention denies that pilotage is subject to governmental control, and therefore is foreclosed by the adjudications previously referred to. Likewise the contention that the commissioned pilots have a monopoly of the business, and by combination among themselves exclude all others from the business, is also but a denial of the authority of the State to regulate.

The court says in conclusion that if an analysis of the Texas laws justifies the conclusion that they are unwise—and the court disclaims any intention of implying that they are—the remedy is in Congress; and cannot be judicially afforded.

The statutes of Virginia on the subject of pilots and pilotage (Ch. 89, secs. 1955–1990 Va. Code Anno.), are very similar to those of the State of Texas, referred to in the decision above, and are not void, unless they contain discriminations between vessels sailing between the ports of one State and vessels sailing between the ports of different States, or discriminations against vessels propelled in whole or in part by steam, or against national vessels of the United States.

C. B. G.

INSURANCE—CHATELS—MORTGAGE CLAUSE—WAIVER.—In *Allesina v. London & L. & G. Ins. Co.*, decided by the Supreme Court of Oregon, in October, 1904 (78 Pac. 392), it was held that where a policy on a stock of goods and materials was issued on an oral application, and no information was requested or given by insured as to a chattel mortgage, and insured did not know that the policy to be issued contained a clause rendering the insurance void if the property was covered by a chattel mortgage until after the policy had been delivered, and he had paid the premium, such facts constituted a waiver of the mortgage clause by the insurer, citing *German Ins. &c. Inst. v. Kline*, 44 Neb. 395, 62 N. W. 857; *Hanover Fire Ins. Co. v. Bohn*, 48 Neb. 743, 67 N. W. 774, 58 Am. St. Rep. 719; *German Mut. Ins. Co. v. Niewedde*, 11 Ind. App. 624, 39 N. E. 534; *Wright v. Fire Ins. Co.*, 12 Mont. 474, 31 Pac. 87, 19 L. R. A. 211; *Queen Ins. Co. v. Kline*, 32 S. W. 214, 17 Ky. Law Rep. 619; *Georgia Home Ins. Co. v. Holmes*, 75 Miss. 390, 23 South. 183, 65 Am. St. Rep. 611. The same doctrine has been applied by the courts of New York and Pennsylvania to a different state of facts: *Short v. Holme Ins. Co.*, 90 N. Y. 16, 43 Am. Rep. 138; *Phil. Tool Co. v. B. A. Assurance Co.*, 132 Pa. 236, 19 Atl. 77, 19 Am. St. Rep. 596; *Culdwell v. Fire Ass'n*, 177 Pa. 492, 35 Atl. 612.